

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

VOIP-PAL.COM, INC.,

Plaintiff,

vs.

NO. 6:21-cv-00668 ADA

AMAZON.COM, INC.;
AMAZON.COM, SERVICES LLC; and
AMAZON WEB SERVICES, INC.,

Defendants.

**DECLARATION OF CHRISTOPHER KELLEY IN SUPPORT OF
AMAZON'S MOTION TO TRANSFER UNDER 28 U.S.C. § 1404(a)**

I, Christopher Kelley, hereby declare as follows:

1. I have personal knowledge of the facts in this declaration.
2. Attached as Exhibit A is a true and correct copy of the Stipulation and Order Transferring the Case to the Northern District of California, issued by the District of Nevada on November 13, 2018, in the first case brought by VoIP-Pal against Amazon, *VoIP-Pal.Com, Inc. v. Amazon.com, Inc.*, No. 2:18-cv-01076-MMD-VCF (D. Nev.).
3. Attached as Exhibit B is a true and correct copy of Judge Koh's Order from November 1, 2019, Granting Consolidated Motion to Dismiss with Prejudice in *VoIP-Pal.Com, Inc. v. Apple, Inc.*, 18-CV-06216-LHK; and in *VoIP-Pal.Com, Inc. v. Amazon.Com, Inc.*, 18-CV-07020-LHK.
4. Attached as Exhibit C is a true and correct copy of the decision from the Federal Circuit in the matters *VoIP-Pal.com, Inc. v. Apple, Inc.*, No. 2020-1241; and *VoIP-Pal.com, Inc. v. Amazon.com, Inc.*, No. 2020-1244 (Fed. Cir. Nov. 3, 2020), affirming Judge Koh's order of dismissal of VoIP-Pal's litigation against Amazon and Apple.
5. Attached as Exhibit D is a true and correct copy of the complaint filed in *VoIP-Pal.Com, Inc. v. Amazon.Com, Inc.*, 2:18-cv-01076 (D. Nev.) on June 15, 2018.
6. Attached as Exhibit E is a true and correct copy of searches for commercial flights scheduled for departures from Seattle, Toronto, Vancouver, San Francisco, San Jose terminating at San Francisco, San Jose, Austin and Waco. These searches were conducted on November 5 and 8, 2021 for departure on March 4, 2022 using the Google ITA Matrix airfare search tool.
7. Attached as Exhibit F is a true and correct copy of estimates from Google Maps regarding average times to drive from San Francisco, San Jose, Austin and Waco airports to drive to federal courthouses located in San Francisco, San Jose, Oakland and Waco, at 2:30 PM in the afternoon.

8. The average travel time for the first five flights (excluding code shares) between Toronto, Seattle, San Francisco, San Jose and the San Francisco International Airport (SFO), Norman Y. Mineta International Airport in San Jose (SJC), the Austin-Bergstrom International Airport in Austin (AUS) and the Waco Regional Airport (ACT) are given in this chart

	Toronto	Seattle	San Francisco	San Jose
to SFO	6 hours, 3 mins	2 hours, 6 mins		
to SJC	7 hours, 34 mins	2 hours, 10 mins		
to AUS	5 hours, 14 mins	4 hours, 15 mins	3 hours, 28 mins	4 hours, 32 mins
to ACT	7 hours, 2 mins	5 hours, 30 mins	5 hours, 15 mins	5 hours, 53 mins

Adding the driving time required by the midpoint of the estimates provided by Google Maps gives the following time estimates to travel to the federal courthouses in San Francisco, San Jose, Oakland and Waco from the four starting cities via San Francisco International Airport (SFO), Norman Y. Mineta San Jose International Airport (SJC), Austin-Bergstrom International Airport (AUS) and Waco Regional Airport (ACT).

	Toronto	Seattle	San Francisco	San Jose
San Fran via SFO	6 hours, 34 mins	2 hours, 37 mins		
San Jose via SFO	7 hours, 3 mins	3 hours, 6 mins		
San Jose via SJC	7 hours, 45 mins	2 hours, 22 mins		
Oakland via SFO	6 hours, 58 mins	3 hours, 1 min		
Waco via AUS	7 hours, 19 mins	6 hours, 20 mins	5 hours, 33 mins	6 hours, 37 mins
Waco via ACT	7 hours, 18 mins	5 hours, 46 mins	5 hours, 31 mins	6 hours, 9 mins

9. Attached as Exhibit G are pages from the Joint Invalidity Contentions filed by Amazon and Apple in the first set of cases filed by VoIP-Pal against Amazon. These pages identify specific system prior art including voice over IP (VOIP) systems developed by Sylantro Systems, Altigen Communications and StarVox Communications believed to be relevant to establish the invalidity of VoIP-Pal's patents.

10. Attached as Exhibit H is a true and correct copy of webpages from 2003 for Sylantro Systems retrieved from the Internet Archive Wayback Machine on November 7, 2021. One of these pages identifies Pete Bonee as the President and CEO and John Weald as Vice President of Product Development.

11. Attached as Exhibit I is a true and correct copy of the LinkedIn profile for Pete Bonee. It states that he was founder and CEO of Sylantro Systems from 1998 through 2007. It identifies him as a resident of the San Francisco Bay Area.

12. Attached as Exhibit J is a true and correct copy of the LinkedIn profile for John Weald that identifies him as having served as Sylantro's Senior VP of Engineering and CTO. It states that he "[built the engineering organization and product from concept to the leading VoIP SIP Application Server that was deployed at carriers worldwide." It identifies him as residing in San Jose, California.

13. Attached as Exhibit K is a true and correct copy of webpages from Altigen Communications in 2005 retrieved from the Internet Archive Wayback Machine on November 7, 2021. It describes Altigen's VOIP products and identifies Shirley Sun as Vice President of Research and Development. It notes that "Ms. Sun was a key contributor to the design, architecture, and building of the remote access server product from ground up."

14. Attached as Exhibit L is a true and correct copy of a page from Altigen's contemporary website identifying Ms. Sun as Vice President of Research and Development. Altigen is in Milpitas, California, in the Northern District of California. This document was retrieved on November 7, 2021.

15. Attached as Exhibit M is a true and correct copy of webpages from StarVox Communications, Inc. from 2005, 2003, and 2006 retrieved from the Internet Archive Wayback Machine on November 10, 2021. As indicated in these webpages, StarVox was based in San Jose,

California. One of the webpages identifies Gordon Chang as managing “Engineering & Technology” for StarVox. Another identifies Nancy Dirgo as VP of Engineering.

16. Attached as Exhibit N is a true and correct copy of the LinkedIn profile for Gordon Chang. It identifies him as Co-Founder and CTO of StarVox from 1997 through 2002 and a resident of Los Altos, which is located in the Northern District.

17. Attached as Exhibit O is a true and correct copy of the LinkedIn profile for Nancy Dirgo. It identifies her as VP of Engineering at StarVox in 2006 and 2007 and as a current resident of Oakland.

18. There are four inventors named on the U.S. patents 8,630,234 and 10,880,721 asserted by VoIP-Pal: Johan Emil Viktor Björsell, Maksym Sobolyev, Pentti Kalevi Huttunen and Emil Malak. Attached as Exhibit P is a true and correct copy of a LinkedIn profile for Maksym Sobolyev, downloaded on November 5, 2021, that identifies him as a resident of New Westminster, British Columbia, Canada. New Westminster is a suburb of Vancouver. The profile notes that he worked at Digifonica International Inc., where the patents-in-suit were developed.

19. Attached as Exhibit Q is a true and correct copy of a LinkedIn profile for Pentti Huttunen, downloaded on November 5, 2021, that identifies him as a resident of Vancouver, British Columbia, Canada. The profile notes that he worked at Digifonica.

20. Attached as Exhibit R is a true and correct copy of the LinkedIn profile for Johan Emil Viktor (“Jev”) Björsell, downloaded on November 5, 2021, that identifies him as a resident of the “Greater Vancouver Metropolitan Area” in Canada. ECAD Labs, where he is CEO, is located in Vancouver. The profile notes that he worked at Digifonica Canada Ltd., and that he is an inventor of the patent application 13/056,277, which is the application from which the patents-in-suit claim priority.

21. The average time for the first five flights on March 4, 2022, from Vancouver to San Francisco International Airport (SFO), Norman Y. Mineta International Airport in San Jose (SJC), Austin-Bergstrom International Airport (AUS) and Waco Regional Airport (ACT) are given in the table below.

	Vancouver
to SFO	2 hours, 17 mins
to SJC	4 hours, 31 mins
to AUS	6 hours, 20 mins
to ACT	7 hours, 59 mins

Adding the driving time required by the midpoint of the estimates provided by Google Maps gives the following fastest time estimates to travel to the federal courthouses in San Francisco, San Jose, Oakland and Waco from Vancouver via San Francisco International Airport (SFO), Norman Y. Mineta San Jose International Airport (SJC), Austin-Bergstrom International Airport (AUS) and Waco Regional Airport (ACT).

	Vancouver
SF via SFO	2 hours, 48 mins
Oakland via SFO	3 hours, 12 mins
San Jose via SFO	3 hours, 17 mins
San Jose via SJC	4 hours, 43 mins
Waco via AUS	8 hours, 25 mins
Waco via ACT	8 hours, 15 mins

22. Attached as Exhibit S is a true and correct copy of Form 10-K filed by VoIP-Pal in December 2020. It states that VoIP-Pal's principal executive offices are at 10900 NE 4th Street, Suite 2300, Bellevue, WA, 98004. Under the item "Employees" it states that: "We have two full time employees." Item 11 of the Form 10-K identifies Emil Malak as CEO and President and D. Barry Lee as CFO. It reports that they accrued compensation of \$144,000 and \$118,507,

respectively, in 2020. Item 12 of this report states that Mr. Emil Malak exercises control over 34.37% of VoIP-Pal shares through Digifonica Intellectual Properties (DIP) Ltd., which he controls.

23. Attached as Exhibit T is an exhibit titled “Debt Settlement Agreement” that was filed by VoIP-Pal as an exhibit to Form 8-K filed by VoIP-Pal with the SEC in April 2021. The Debt Settlement Agreement identifies Mr. Emil Malak as a resident of Vancouver, Canada.

24. Attached as Exhibit U is a true and correct copy of Form D filed with the SEC by VoIP-Pal in April 2018. It identifies Mr. Emil Malak and Mr. Barry Lee as residents of Vancouver, Canada.

25. Attached as Exhibit V is a true and correct copy of Form 8-K filed by VoIP-Pal on March 23, 2021, stating that Barry Lee resigned his role as CFO on March 22, 2021, and that Kevin Williams has been appointed as replacement CFO.

26. Attached as Exhibit W is a true and correct copy of a filing with the Texas Secretary of State on July 1, 2021 requesting that VoIP-Pal’s principal office be changed to the address 7215 Bosque Blvd., Suite 102, in Waco, Texas.

27. Attached as Exhibit X is a true and correct copy of Judge Koh’s Order Denying Consolidated Motion to Dismiss from December 11, 2020, in the cases of *Apple Inc v. VoIP-Pal.com, Inc.*, No. 20-CV-02460-LHK; *AT&T Corp. v. VoIP-Pal.com, Inc.*, No. 20-CV-02995-LHK; and *Cellco Partnership v. VoIP-Pal.com, Inc.*, No. 20-CV-03092-LHK.

28. I used the Docket Navigator (www.docketnavigator.com) service to collect the following statistics about patent cases on Judge Albright’s docket in the Western District of Texas. Docket Navigator collects data about patent cases in the federal court system. On November 3, 2021, Docket Navigator reported that there were 806 active patent cases before Judge Albright. It provided the following statistics for these matters by date of filing:

Year of Filing	Total	Active	Settled / dismissed	Transferred
2017 or earlier	3	1	1	0
2018	31	4	20	4
2019	251	30	165	35
2020	792	245	471	57
2021 (thru 6/24)	447	236	204	5
2021 (after 6/24)	321	290	26	1

This data indicates that 185 of the 285, or approximately 65%, of the cases filed before 2020 were settled or otherwise dismissed. As of November 3, 2021, of the matters filed since the start of 2020, 701 out of 1560, or approximately 45%, had been settled or otherwise dismissed. If 65% of the 1239 matters filed in 2020 and in 2021 before June 25 were ultimately to be settled or dismissed pretrial, the remaining 35% would constitute approximately 434 matters filed between January 1, 2020 and June 24, 2021 that would need to be tried or resolved by motion. Subtracting the 62 matters that have been transferred leaves 372 matters. Adding the 35 remaining active matters filed before 2020 brings the total number of patent matters to 407.

29. Attached as Exhibit Y is a true and correct copy of a report from the Lex Machina database as of November 8, 2021. It indicates that Judge Alan Albright has 1,079 open matters as of that date.

30. Attached as Exhibit Z is a true and correct copy of a report from the Lex Machina database that provides information about the dockets of federal district court judges. This report indicates that as of November 8, 2021 there were 15,096 open cases in the Northern District, and that, except for a small number of judges who have large dockets of product liability cases, most of the Article III judges in the Northern District had 411 or fewer open matters. Specifically, there are nine Article III judges not on Senior Status with 411 or fewer open matters.

31. Attached as Exhibit AA is a true and correct copy of the pages for the Northern District of California and the Western District of Texas from the June 30, 2021 statistical report prepared by the Administrative Office of the U.S. Courts. It indicates that the median time to trial in the Northern District of California for civil matters is 26.9 months and the median time to trial in the Western District of Texas is 23.8 months.

32. Attached as Exhibit BB is a true and correct copy of a report from the Lex Machina database retrieved on November 8, 2021. It indicates that 748 days, or about 25 months, is the median time to trial in the Northern District of California for cases filed since 2011.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: November 19, 2021

/s/ Christopher Kelley
Christopher Kelley

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5, I hereby certify that, on Fri, Nov 19, 2021, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system.

/s/ Daniel T. Shvodian

Daniel T. Shvodian